IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CONTEMPT PETITION NO.63 OF 2006

IN

WRIT PETITION NO.757 OF 2006

Shri.S.Balkrishnan. ...Petitioner

vs.

State of Maharashtra & others. ...Respondents.

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Mr.Nitin Vhatkar i/b. G.S.Hranandani, for Petitioner.

Mr.P.M.Palshikar, for Respondent nos.1 & 2.

Mr.A.J.Almeida, for Respondent no.3.

**CORAM: D.K.DESHMUKH,J.**

**DATED: 22nd January, 2007.**

**P.C.**:-

1. The petitioner alleges that the respondent no.3 has willfully breached the order made by this Court dated 17.4.2006 passed in Writ petition no.757 of 2005. By that order, this Court has directed the respondent no.3 to make payment of gratuity to the petitioner. The respondent no.3 does not dispute the liability to pay gratuity to the

petitioner as per the order of this Court, but according to the respondent no.3 if the petitioner is to be treated as an employee which is a necessity for being entitlement to payment of gratuity then the petitioner will have to pay income tax as an employee of the respondent no.3. According to the respondent no.3, the income tax as shown payable by the petitioner under the income tax Act was deducted by the respondent no.3 treating the petitioner as consultant and not as an employee. But now because of the High Court's order, the petitioner is to be treated as an employee, the rate at which he has to pay income tax is different and higher and therefore, if the liability of the petitioner to pay income tax as an employee is taken into consideration, nothing is payable by the respondent no.3 to the petitioner. On the contrary, the amount in excess is liable to be recovered by the respondent no.3 from the petitioner for being paid to the Income Tax department.

2. The petitioner, does not dispute that the rate at which the income tax is liable to be paid on a salary of an employee is higher than the rate of income tax that is to be charged when a consultant is paid his fees. The learned Counsel appearing for petitioner submits that though he is entitled to payment of gratuity as per this Court's order, he is not an employee so that income tax would be payable on his salary at higher rate. The learned Counsel drew my attention towards

the provisions of the Payment of Wages Act specially the definition of the term "employee". It is a settled law that gratuity is payable only to an employee. A legal consultant is not an employee, and therefore, if the petitioner is treated as legal consultant, the gratuity would not be payable to him. But as this Court has held that the gratuity is payable to the petitioner, obviously, he is an employee of the respondent no.3 and therefore, as the respondent no.3 would be liable to pay gratuity to the petitioner, the petitioner as an employee would be liable to pay income tax at a higher rate. In this view of the matter therefore, in my opinion, it cannot be said that the respondent no.3 has breached the order made by this Court. Hence, the petition is disposed of.

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